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THE MALABAR TENANCY AMENDING BILL—RIGHT OF EVICTION

By

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Section 14 of the Malabar Tenancy Act (Act XIV of 1930) provides that no suit for eviction of a cultivating verumpattomdar shall lie at the instance of his landlord except on the following grounds :—

(1) Wilful denial of the landlord's title.

(2) Wilful waste committed by the tenant.

(3) Non-payment of rent by the tenant within three months from the due date.

(4) The tenant collusively allowing a stranger to encroach on the holding adversely to the interests of the landlord.

(5) The landlord requiring the holding at the end of an agricultural year *bona fide* for his own cultivation, etc.

(6) The landlord requiring the holding or part thereof at the end of an agricultural year for building purposes for himself, etc.

(7) The tenant failing to comply with the order of the Court under sub-section 3 of section 13 (to furnish security for one year's rent, etc.).

Section 20 of the Act mentions the grounds for eviction of a customary verum-pattomdar, kuzhikanomdar and kanomdar. Grounds Nos. 1, 2, 4, 5 and 6 of section 20 are more or less reproductions of grounds Nos. 1, 2, 4, 5 and 6 of section 14.

It is to be observed that the landlord's right of eviction has been very much curtailed by the Act of 1930. Whereas before the enactment of the Malabar Tenancy Act, the landlord could evict without assigning any grounds or reasons whatever, the tenants mentioned in sections 14 and 20, cannot now be evicted by their immediate landlords unless one or other of the grounds mentioned in sections 14 and 20 exists.

The landlord's right of eviction for his own cultivation is practically nullified by the provisions contained in the new Amending Bill.

The Act of 1930 provided that the landlord can evict if he required the property *bona fide* for his own cultivation or for that of any member of his family. There was a conflict of decisions with regard to the interpretation of the words "requires the property *bona fide* for his cultivation" occurring in clause 5 of sections 14 and 20 of the Act. Mr. Justice Venkataramana Rao took the view that a mere desire on the part of the landlord to cultivate his land was not enough and the correct

test was actual positive need for the landlord to cultivate the land (vide *Raman Nair* v. *Kesavan Embrandiri*, S. A. No. 42 of 1939, unreported). Mr. Justice King expressed dissent from this view in another case (*Esrayi Achuthan* v. *Poochakandi Panakkat Katheeja Bai*, S.A. No. 538 of 1938, unreported). His Lordship says that all that is necessary is that the Court should be satisfied that the plaintiff landlord's allegation that he wishes to cultivate his land is a statement made *bona fide*. The view taken by Mr. Justice King was approved by a Division Bench (consisting of Leach, C.J., and Chandrasekhara Iyer, J.) in the case of *Narikkal Chathan* v. *Vesthiyottillath Kesavan Nambudiri*[1]. The learned Judges laid down in this case that if the Court is convinced that the landlord has really the intention of cultivating his land, he is entitled to be put in possession of it. The learned Judges say :—

"The fact that he (the landlord) has sufficient land under cultivation elsewhere to provide for the needs of himself and his family matters not. *It is his land, and if he really wants to cultivate it, he is entitled to regain possession*, when the kanom has expired and there has been no renewal."

The law laid down by the learned Judges in this case recognises the fact that the landlord in Malabar is the owner of the land.

Unfortunately, however, the law was altered by the Amendment Act of 1945 (Act XXIV of 1945) which substituted the words "the landlord needs the property for the purpose of raising crops for his own maintenance or for that of any member of his family, etc., for the words "the landlord requires the property *bona fide* for his own cultivation, etc.", in clause 5 of sections 14 and 20 of the original Act. The amendment of 1945 has very much curtailed the landlord's right to evict for his own cultivation. A *bona fide* intention to cultivate is not now sufficient to entitle the landlord to evict ; he must allege and prove that it is necessary for him to cultivate the land in order to augment his income for the purpose of meeting the maintenance expenses of himself and the other members of his family.

The amendment of 1945 has made the position of the landlord extremely difficult. The word "maintenance" is a very comprehensive expression. It does not merely mean expenses required for food and clothing ; it will include sums which are required for keeping up a respectable appearance consistent with the position and dignity of the family to which a person belongs, sums which are required for a reasonable amount of travelling to holy places in the case of a member of an aristocratic family, for slight convenience and comforts, expenses required for medical treatment, for oil, tea, coffee and confectionary, expenses of giving education to the members of the family, expenses of engaging a tutor for the children who are put in school, marriage expenses of the members of the family, expenses of defending a junior member involved in a criminal case and a variety of other items of expense (vide *Sheshappa* v. *Devaraja*[2] and other cases quoted therein).

Under the Amended Act, the landlord is obliged to disclose all his assets and liabilities to the Court, and to place his entire family budget before the Court in order to satisfy it that it is necessary for him to cultivate his land for the purpose of augmenting his income for meeting the maintenance expenses of himself and his family. Is it not *prima facie* unfair and improper to compel a landlord claiming eviction of his property for his own cultivation to expose his entire family budget before a Court of law and to satisfy the Court that he requires so much for milk and sugar, so much for barber and washerman, so much for food, for oil, for soap and for a hundred other small items of expense? Needless to say, the enquiry regarding the landlord's need to cultivate contemplated by the Amendment of 1945 would be extremely harassing, humiliating and oppressive.

Even this attenuated right of the landlord to evict for own cultivation is sought to be stultified by the Amending Bill. The Bill provides that the landlord's right to evict for own cultivation must be exercised within 5 years of the commencement

1. (1941) 2 M.L.J. 455.

2. (1925) 50 M.L.J. 434.

of the Amended Act. This proivision virtually abrogates the landlord's right to evict for own cultivation after the expiry of 5 years from the commencement of the proposed Amendment Act. Is it to be supposed that after the expiry of the said period of 5 years the landlords in Malabar would have no necessity to cultivate their lands? Suppose the need arises seven or eight years after the commencement of the proposed Amendment Act. It is obvious that no anticipatory action for eviction can be filed in such cases before the need to cultivate actually arises. The right to evict must always be available to the landlord if he requires the property for his own cultivation.

Another equally unreasonable and objectionable provision in the Bill is that which says that the landlord's right to claim eviction for own cultivation is not available in the case of a holding which has been in the possession of the tenant or the members of his family if such eviction would reduce the extent of the land in the possession of the tenant to less than 5 acres. This provision would defeat the rights of recent purchasers, persons who got the land under a recent partition or partition decree, persons who having been employed in public service or in foreign countries on diplomatic or other public service were obliged to lease their lands and who on coming back to their homes after retirement find it necessary and are anxious to resume cultivation of their lands, minors and persons under some other legal disability.

If the tenant in the instances just mentioned is in possession of only 5 acres of land and this holding is all the property that his landlord owns, the latter cannot under the present bill evict for his own cultivation, because the result of the eviction would be that the tenant would not be in possession of any land. *Ex-hypothesi* it would seem that even if the holding consist of, say 15 acres of land under the Amending Bill the suit for eviction would have to be dismissed, if the tenant is not in possession of any other property or if other properties in his possession do not amount to 5 acres. The dismissal of the suit, would in the circumstances, result in the tenant being enabled to continue in possession of the landlord's entire 15 acres; whereas the Bill wants to secure him in possession of 5 acres only—an anomalous result probably not intended by the authors of the Bill.

A very perplexing situation will arise if a tenant is in possession of four holdings, each 5 acres in extent and all the four landlords file suits simultaneously for eviction. If all the four suits are decreed, the result would be that the tenant would not be in possession of the minimum 5 acres mentioned in the Bill. All the four suits would therefore have to be dismissed—with the consequence that the tenant would be enabled to remain in possession of 20 acres instead of 5 acres.

Is a decree for partial eviction permissible in a case where the holding is more than 5 acres in extent? The Bill does not seem to authorise a splitting up of the holding and a decree for eviction of a part of the holding. The consequences of splitting up a holding can be easily imagined especially in a case where the holding is a compact one and there is only one Eri or water reservoir for irrigating the lands and one farm house for the entire holding. Suppose the holding is 6 acres in extent, it would be ridiculous, even were it permissible to split up the holding and give a decree for eviction of one acre in favour of the landlord and to dismiss the suit with reference to the remaining 5 acres in order to enable the tenant to continue in possession of the minimum 5 acres mentioned in the Bill. Suppose the tenant is in possession of another property which is 4 acres in extent, is the Court to effect a partition of the plaintiff landlord's property and to allot one acre out of it to the tenant in order to make up the minimum 5 acres for the tenant?

It is not easy to appreciate the partiality shown in the Bill for a minimum extent of 5 acres of land for the tenant. One should have thought that the partiality for a minimum extent of land—at the rate of 3 or 5 acres of land per head in the landlord's family—should be shown in favour of the landlord who is the owner of the land in Malabar rather than in favour of the tenant.

To place further restrictions on the landlords' very limited right of eviction for own cultivation would be *prima facie* unjust and unreasonable. Rather, in fairness to the landlord in Malabar the Legislature ought to change the law introduced by the Amending Act of 1945 and amend clause 5 of sections 14 and 20 in conformity with the law laid down by the High Court in *Norikkal Chathan* v. *Veethiyottillath Kesavan Nambudiri*[1], so as to enable the landlord to regain possession of his land if he really wants to cultivate it.

CONSTITUTIONAL LIMITATIONS ON THE MALABAR TENANCY AMENDMENT BILL, 1950

By

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The recent Bill to amend the Malabar Tenancy Act of 1930 brought forward by the Government of Madras and introduced in the Legislative Assembly by the Minister for Law in October last raises several constitutional issues of a far-reaching character, which may render it invalid as it infringes the Fundamental Rights guaranteed under the Constitution and would appear to be *ultra vires* the powers of the Local Legislature.

To appreciate the issues involved it would be worth while to examine the tenancy law in Malabar at the present moment, and in what way the proposed changes seek to modify the existing state of things. The Malabar Tenancy Act (1930) which now governs the relationship of landlord and tenant in Malabar curtailed the landlord's right to eviction of his tenant and the reclamation of land under definite conditions and only when the landlord required the land *bona fide* for cultivation for himself or a member of his family. It recognised fixity of tenure of Verumpattamdars (actual tillers of the soil) kanomdars (intermediaries) and tenants of kudiyiruppus (homesteads) except under certain conditions specified in the Act. Fair rent was fixed at one-third of the gross produce in the case of garden lands; in regard to cocoanut trees, one-fifth of the said one-third and in regard to pepper trees and arecanuts, one-sixth of the said one-third. Fair rent in case of dry lands shall be three times the annual assessment.

Although there has been persistent agitation in Malabar after 1930 for agrarian reforms no new measure was introduced. The Report of the Kuttikrishna Menon Committee who investigated the question in 1939 at the instance of the Madras Government was put on the shelf following the outbreak of World War II and the exit of the Congress Ministry from office. After the general election in 1946 when the Congress Government came back to office it was found that a large number of eviction suits were pending against tenants in various courts in Malabar. Consequently the Government passed the Madras Tenants and Ryots Protection Act (XVII of 1946) which stayed all eviction suits against tenants pending new legislation.

The leading features of the proposed Amendment Bill are :—

(1) the conferral of fixity of tenure to the tenant in possession for 12 years and more who shall not be evicted from his holding if the eviction were to reduce the extent of his tenancy to less than five acres;

(2) the abrogation of the landlord's existing right to resume the land, except within the narrow limit, where the landlord requires it for cultivation for his maintenance or that of his family members and that the landlord exercises his option within five years of passing of the Bill;

(3) renewal fee is abolished altogether;

(4) the net produce of the land is to be enjoyed between the landlord and tenant on a fifty-fifty basis, thus fixing the rent payable to the landlord at 50 per cent. basis calculated on the net yield;

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1. (1941) 2 M.L.J. 455.

(5) the holder of kudiyiruppus (homesteads) is given the new right to purchase the right of his immediate landlord at the current market price if the holder has been in occupation for ten consecutive years.

A cursory glance through the provisions of the Bill is sufficient to demonstrate that it is an expropriatory legislation, revolutionary in character which seeks to deprive the *jenmi* of his accepted rights without any compensation or other adequate safeguards. Section 299 of the Government of India Act, 1935, had provided for adequate compensation in the event of resumption of land by Government or any legislation which deprives the landholders of their property interests. The Joint Select Committee of the British Parliament on Indian Constitutional Reforms said : ". . . . . . We think that some general provision (para. 369) should be inserted in the Constitution Act safeguarding private property against expropriation ; . . . . . . we think the legislation should secure that legislation expropriating or authorising the expropriation of the property of particular individuals should be lawful only if confined to expropriation for public purposes, and if compensation is determined, either in the first instance or on appeal by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish or modify the rights of individuals in it, ought, we think, to require the previous sanction by the Governor-General or the Governor . . . . ." These are memorable words written more than fifteen years ago. Under section 299, two conditions had to be fulfilled before the compulsory acquisition of land by State can be justified as legal : (*a*) the compulsory acquisition must be for public purpose ; (*b*) it must provide for compensation and should either fix it or state the principles on which it is to be worked out. Under section 299 no person shall be deprived of his property by a mere executive or administrative or prerogative Act, save by authority of law.

The phrase 'authority of law', has given rise to much differing comment' but the most acceptable one is from Dr. Coolley's Constitutional Limitations, Vol. II, pages 737-8, where the author observed :—

"The words 'by the law of the land' do not mean a statute passed for the purpose of working the wrong. By the law of the land is most clearly intended the general law ; the meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land ".

The corresponding provision is to be found in Article 31 (1) of the Constitution which lays down that no person shall be deprived of his property save by authority of law. Article 19 (*f*) guarantees to any citizen the right to acquire, hold and dispose of property. Article 13 provides that laws inconsistent with or in derogation of Fundamental Rights are void. Article 31 further provides that compensation should be fixed in the event of acquisition or deprivation of property by the State and the acquisition shall be for a public purpose.

Judged by these tests alone the Amendment Bill has no legs to stand upon. The Bill authorises compulsory deprivation of the landlord's rights in his land, *e.g.*, the collection of renewal fees and the fixation of fair rent by him and the reclamation of land for his own use or the sharing of produce; the acquisition is not for public purpose and it does not provide for compensation to the landlord but leaves him with the empty husk of proprietorship.

Under Article 31 of the Constitution it is provided :—

(1) No person shall be deprived of his property save by authority of the law.

(2) No property moveable or immoveable including any interest in or in any company owning any commercial or industrial undertaking shall be taken

possession of or acquired for public purpose under any law authorising or taking of such possession or such acquisition, unless the law provides for compensation . . . . . . or fixes the amount of compensation, or specifies the principles on which and the manner in which the compensation is to be determined.

(3) Such a bill must be reserved for the consideration of the President.

(4) Once it has received his assent it shall not be challenged in a Court of Law.

It will be seen that this Article emphasises that the State can deprive a person of his rights only on payment of compensation and the deprivation or acquisition should be for a public purpose. The Amendment Bill authorises the deprivation of the rights of the landlord by the tenants without compensation to the landlords and without a public purpose. On the question as to whether a certificate of the President under Article 31 (4) shall not save the Bill, the answer must be, no. Ordinarily the President's certificate can cure only some irregularity in details of a valid law. But if the legislation is void *ab initio*, the assent of the President shall not cure it as to restore it to the rank of a valid piece of legislation. According to the Supreme Court of America (30 U.S.S.C.R.) :—

"An unconstitutional Act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed".

Hence it must be said that if the Bill is inconsistent with Article 19 (1) (*f*), it is an invalid legislation notwithstanding the assent of the President under Article 31 (4) after it is passed into law. A legislation which is primarily void as where it authorises deprivation of property without compensation cannot be validated by a certificate of the President. It would be a contravention of the Funda mental Rights guaranteed under the Constitution.

Under the Malabar Tenancy Act of 1930, renewal fees have been collected from time immemorial by the landlords at the time of the grant of lease from the tenants. It represented the profit made by the tenant during his tenancy and usally it was fixed at 2½ times the profits. The Kuttikrishna Menon Committee recommended one year's profits as the renewal fee. Under the Amendment Bill, the renewal fees are to be abolished completely. There is no justification for the complete abolition without any compensation to the landlords. The expropriectary character of the legislation is further brought out in the restrictions imposed in the matter of reclamation of lands by the landlords, the sharing of profits and the fixation of fair rent, the right to evict tenants in possession and the fixity of tenure to be granted to them and the time limit of five years from the date of passing of the Bill fixed for reclamation by the landlord.

These restrictions cannot be said to be reasonable ones under Article 19 (5) which alone can save the Bill from being declared a nullity. Nor are these restrictions in the interest of any Schedule Tribe.

In the Constituent Assembly of India during the debate in 1948 on Article 31 of the Constitution, Prime Minister Nehru criticising the trend of the debate to invoke the jurisdiction of Supreme Court regarding the validity of such expropriatory legislation stated that "the Supreme Court shall not arrogate to itself the powers of a third chamber sitting in judgment over a Sovereign Legislature." But the Legislature is not sovereign, neither is it constituent. It can function only within the ambit of the powers conferred by the Constitution and expressly limited by the Act. Within those limits it has got substantial and plenary powers of legislation. "If what has been done is legislation, within the general scope of affirmative words which give the power and if it violates no express condition or restriction by which that power is limited, it is not for any Court of Justice to enquire further or to enlarge constructively those conditions and restrictions". (*Queen* v. *Burah*[1].) Under no canon of construction can it be said that the Bill is saved under Article 31 or Article 19 (5).

On the vexed question, as to whether under the doctrine of severability the Bill can be reckoned as a valid piece of legislation if the offending sections like sections 17 and 20 and the provisions relating to the abolition of renewal fees and other expropriatory sections are deleted, it has to be said that those sections are closely interwoven with the texture of the Bill. They constitute the warp and woof of the Bill and there is much of interlacing and interconnection with these sections and the rest of the Amendment Bill. It is difficult to disentangle them from the Bill, without destroying the Bill itself. Indeed the dominant intention of the Bill is to give relief to the tenants by amending the Malabar Tenancy Act of 1930 where it affects (*a*) fixity of tenure of tenants, (*b*) fixation of fair rent, (*c*) the resumption of land by the landlord and the right to eviction of the tenants, (*d*) the sharing of profits between landlord and tenant, (*e*) the abolition of renewal fees and (*f*) the compulsory option given to the landlord to elect within five years of passing of the Bill. But some of the lands to be resumed are the subject-matter of litigation for the past many years. The doctrine of severability which otherwise might save the Bill as a valid piece of legislation notwithstanding some illegal provisions which will have to be deleted, has no application here. The background of the Bill, the foundation on which it has been worked out and its pith and substance is to wipe out the intermediary landlords and throw overboard their existing rights without compensation for the benefit of the tenants at the expense of the *jenmis*. As such the doctrine of severability can have no application in the present context without defeating the scheme of the Amendment Bill.

It is possible to advance the contention that under the Law of Eminent Domain, the State is within its competence to bring in a legislation of the kind. But that doctrine is severely circumscribed. Dr. Coolley in his Constitutional Limitations, (Vol. II, Ch. XV) said :—

"Eminent Domain is a right inherent in all Sovereignties, and is defined as the right of the Nation or the State, or those to whom power has been lawfully delegated to condemn private property for public use and to appropriate the ownership or possession of such property for such use, upon paying the owner due compensation according to law. . . . ." The definition given of the right of Eminent Domain implies that the purpose for which it may be exercised must not be a private purpose ; and it is conceded on all hands that the Legislature has no power in any case to take the property of one individual and to pass it on to another without reference to some use to which it is to be applied for the public benefit. "The right of Eminent Domain does not imply in the Sovereign power a right to take the property of one citizen and transfer it to another even for full compensation where public interest will in no way be promoted by such transfer . . . . . . These limitations must be regarded as in the nature of a condition precedent which are not only to be observed and complied with before the right of the property owner is disturbed but the party claiming authority under the adverse proceeding must show affirmatively such compliance." To lean on the law of Eminent Domain is therefore but a desperate bid to save a piece of legislation which deprives all the intermediary landlords and the proprietors of their important rights which had received recognition both under the Statute and immemorial user. Without providing for compensation under the new legislation those rights are sought to be wiped out.

It may yet be debated that under the Constitution the right of the State to regulate the tenancy relation in its territory or to appropriate private property to public use lies dormant in the State and it is open to the State to legislate in regard to it under List II (18), 7th Schedule. In this connection it may be said that there is no *acquisition* of property under Article, 31 (2). But it is a piece of confiscatory legislation which forfeits several important valuable rights of a landlord without providing him for any compensation. In this the Bill offends Articles 13 and 31 of the Constitution and the legislative ambit of the State.

1. (1878) L.R. 5 I.A. 178 : I.L.R. 4 Cal. 172 (P.C.).